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| 10/034,966      | 12/26/2001  | Antoine Kawam        | 00216-52900-1-681   | 9312             |

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EXAMINER

LAMM, MARINA

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/034,966

Applicant(s)

KAWAM ET AL.

Examiner

Marina Lamm

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 21-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-20 and 27-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121:

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group I (Claims 1-20) in Paper No. 7 is acknowledged. Claims 27-30 will be examined with the elected group as indicated in the previous Office Action. Further, Applicant's election of shaving products, as a species, is acknowledged. Claims readable on the elected species are 1-13, 15-20 and 27-30.
2. Claims pending are 1-30. Claims 21-26 have been withdrawn from further consideration as directed to non-elected invention. Claim 14 has been withdrawn from consideration as directed to non-elected species (i.e. antiperspirant formulation). Claims 1-13, 15-20 and 27-30 are being examined at this time.

### ***Claim Objections***

3. Claim 17 is objected to because of the following informalities: the term "psig" is misspelled. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-12, 15-20 and 27-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson (US 3,858,764).

Watson teaches a pressurized container having a supplemental source of propellant (a reservoir) capable of releasing propellant into the system when the additional propellant is

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required. See col. 1, lines 38-45. Watson teaches that his containers can be used for dispensing products wherein the propellant is in a gaseous phase and/or dissolved in the composition (concentrate), thus being useful for dispensing both foams and non-foamed formulations such as liquids and solids. See col. 2, lines 65-67; col. 3, lines 1-15. In particular, the container of Watson can be used for dispensing shaving foams containing soap solutions. See col. 3, lines 58-61; Example 1. With respect to Claim 5, Watson teaches that when the composition is dispensed, the propellant from the reservoir is released and a gas/liquid equilibrium is established. See col. 4, lines 48-60. The reservoir is either solid or is enveloped in a solid material which is retained in the container as the composition is being dispensed. See col. 3, lines 20-25. The reservoir can be made of organic polymeric materials such as rubbers (e.g. silicones, latex rubbers, polyisobutylene rubbers, etc.), including partially vulcanized (cross-linked) rubbers which are capable of holding the propellant in solution which does not flow under its own weight. See col. 4, lines 38-45; col. 5, lines 55-60; col. 7, lines 49-59. Watson teaches that the reservoir material is capable of swelling when charged with the propellant (e.g. forms gel with the propellant) and returns to its original dimensions as it loses the propellant. See col. 9, lines 62-67; Table 4. Useful propellants include aliphatic hydrocarbons and halogenated hydrocarbons having vapor pressures in the range 5-200 psig. See col. 2, lines 55-60. When the compositions of Watson are dispersed as foams, a uniform density of foam is maintained until virtually the entire contents (about 90%) of the dispenser have been dispensed. See col. 20, lines 42-56. With respect to Claim 10, which recites that the sorbant comprises a foam or a fibrous material, the sorbant (reservoir) materials of Watson are foams because they are porous substances. See col. 4, lines 38-44. With respect to Claim 11, which recites that the

solubility parameter of the polymer is within 2 units of the solubility parameter of the propellant, this limitation is inherent in the Watson reference because his polymers are capable of holding the propellant in solution (i.e. either gel or liquid) as discussed above. With respect to Claim 19, which recites that the sorbant has a relatively higher affinity for the propellant than for the composition, Watson teaches that his reservoir materials "should not absorb, dissolve or otherwise remove any component of the concentrate to an extent which would cause the dispensed concentrate product to be significantly changed in character". See col. 5, lines 8-14. With respect to Claim 20, which recites that the propellant is substantially insoluble in the composition, Watson teaches that his dispenser can be used for dispensing various systems, including those in which the propellant is a separate phase and not dissolved in the composition (e.g. aqueous concentrates and solid products). See col. 3, lines 1-8. With respect to Claims 27-30, which are directed to a method of manufacturing a personal care product, Watson teaches providing a polymer reservoir (sorbant) within a container containing a shaving foam, sealing the container and adding the propellant through the valve. See Example 1. The reservoir can be mounted on the dip tube or formed as a continuous coating on the inside wall of the container. See col. 4, lines 9-24.

Thus, Watson teaches each and every limitation of Claims 1-12, 15-20 and 27-30.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a

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person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Watson in view of de LaForcade et al. (US 6,464,111) and Villars (US 5,451,396).

Watson applied as above. Watson teaches that his containers are suitable for dispensing a variety of compositions such as aqueous concentrates, toothpastes, shaving foams, solids and hairsprays. See col. 3, lines 1-8; col. 20, lines 59-69. Watson does not explicitly teach dispensing compositions comprising a gel as claimed in the instant claim. However, it is known in the art of cosmetic products to formulate shaving products as either gels, foams or creams and package them in pressurized dispensing containers. See de LaForcade et al. at col. 4, lines 51-54. Further, Villars teaches that clear products such as gels, are becoming increasingly more desirable to the consumers because they are perceived as less irritating. See col. 1, lines 24-30. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the products of Watson such that to use shaving gels as dispensing compositions. One having ordinary skill in the art would have been motivated to do this to obtain an additional, conveniently dispensed, consumer-appealing shaving product as suggested by de LaForcade et al. and Villars.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3,659,395; US 3,912,666; US 3,964,649; US 3,974,945; US 4,431,120; US 4,778,674; US 4,996,240; US 5,510,116; EP 0 385 773 A2.

9. No claim is allowed at this time.

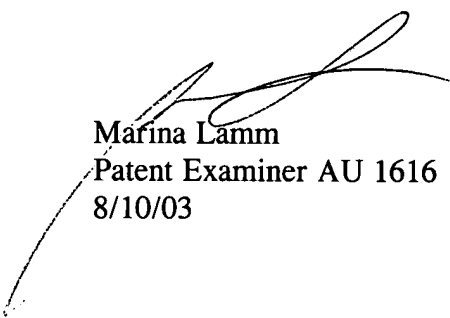
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marina Lamm whose telephone number is (703) 306-4541.

The examiner can normally be reached on Monday to Friday from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached at (703) 308-2927.

The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



Marina Lamm  
Patent Examiner AU 1616  
8/10/03